

LAND USE PERMIT

CASE No. 1R0048-8-EB

APPLICANT Juster Development Company
ADDRESS 1304 Midland Avenue
Yonkers, NY 10704

LAWS/REGULATIONS INVOLVED

10 V.S.A. Chapter 151
(Act 250)

The Environmental Board hereby issues a Land Use Permit Amendment pursuant to the authority vested in it in 10 V.S.A. Chapter 151. This permit amendment applies to the lands identified in and the subject of a deed to Juster Associates, the "Permittee" as "grantee," and recorded in Book 41, Page 13 of Town of Rutland Land Records. This permit specifically authorizes the Permittee to construct and operate a 177,000 square foot addition with related facilities to the Rutland Mall, Town of Rutland, Vermont.

The Permittee, its successors and assigns in interest, are obligated by this permit to complete and maintain the project only as approved by the District #1 Environmental Commission in accordance with the following conditions:

1. This project shall be completed in accordance with the Findings of Fact, Conclusions of Law, and Order #1R0048-8 and #1R0048-8-EB, and in accordance with plans and exhibits stamped "Approved" and on file with the District Commission. In the event of any conflict, the terms and conditions of this permit and the facts relied upon in the Findings of Fact and Conclusions of Law #1R0048-8-EB shall supersede the approved plans and exhibits.
2. No changes shall be made in the design or use of this project without the written approval of the District Coordinator of the District Commission, whichever is appropriate under the Environmental Board Rules.
3. The granting of less than an undivided whole interest in this land or any lot approved herein, is prohibited without the written approval of the District Commission.
4. Failure to comply with any of the conditions of this permit may be grounds for permit revocation pursuant to 10 V.S.A. § 6090(b).
5. By acceptance of this permit, the Permittee agrees to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with any applicable Vermont environmental and health statutes and regulations and with this permit.

6. By the acceptance of the conditions of this permit without appeal, the Permittee confirms for itself and all successors and assigns in interest that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the Permittee and all successors and assigns in interest.
 7. The District Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holder file an affidavit certifying that the project is being completed in accordance with the terms of the permit.
 8. This permit shall expire one year from the date of issuance if the Permittee has not demonstrated an intention to proceed with the project in accordance with 10 V.S.A. § 6091(b) and the Environmental Board Rules.
 9. This permit shall not become valid until the Permittee has read this permit and returned a signed copy of the permit to the District Commission.
 10. The Permittee shall take all necessary actions, including the use of water, to ensure that dust during construction activities does not become a nuisance for nearby residents.
 11. The Permittee shall limit the use of heavy machinery and noisy equipment at the site to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to 12:00 noon on Saturday. No construction or use of machinery shall be allowed on Sundays or federal holidays.
 12. The Permittee shall maintain a 50-foot wide buffer strip along the western property line of the project site during and after construction. Such strip shall be left undisturbed other than to plant, maintain, or replace vegetation. The Permittee shall plant evergreen trees in this buffer, prior to any construction activity within 500 feet of this property line, to achieve a density of evergreen trees of at least one stem every 15 feet. Such planted trees shall be at least six feet in height when planted and shall be trimmed and maintained in healthy condition or replaced as necessary, to screen the site but not to obscure the view of the mountains beyond the site.
 13. The District Commission reserves the right to modify or impose further conditions to prevent operational noise from becoming a nuisance for nearby residents.
 14. The Permittee shall **comply with all of the terms and conditions** of Certification of Compliance #1R0048-8, issued on June 17, 1987, by the Protection Division of the Department of Environmental Conservation, Agency of Natural Resources. Any modification to the Certification of Compliance shall be provided to
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the District Commission and an amendment to this Land Use Permit shall be obtained if necessary to approve the modification.

15. The Permittee shall periodically inspect the piping, valves, and other equipment related to the sanitary sewer system, and make repairs as necessary. The Permittee shall also implement a daily inspection, cleaning, and maintenance program for the public restrooms in the mall to ensure proper operation of the plumbing facilities.
 16. The Permittee shall submit a plan to the District Commission for its approval which will ensure that stormwater discharged into the wetland area cannot create a channel leading to Tenney Brook. No construction of the building above ground or paving of the parking areas shall occur until after the plan has been approved and implemented.
 17. The District Commission reserves the right to modify or impose additional conditions with regard to the discharge of stormwater to ensure that stormwater does not create channels in the wetland area.
 18. The Permittee shall inspect, clean, and repair the stormwater catch basins and retention ponds on an annual basis, or more frequently if necessary to ensure proper operation, and shall maintain records of such maintenance activities available for inspection.
 19. The Permittee shall not dump or plow snow into the new stream channel of Tenney Brook along the north or east sides of the expanded parking lot.
 20. The District Commission reserves the right to impose additional conditions with regard to the treatment of stormwater from the parking lot to ensure that no hazardous substances are discharged into Tenney Brook. Prior to the imposition of any such conditions, the District Commission must receive substantial evidence, in the form of water quality tests, that a hazardous substance is being discharged into Tenney Brook.
 21. The Permittee shall require in all tenant leases that toilets not exceed 3.5 gallons per flush and that sink faucets be equipped with aerator nozzles to reduce water consumption.
 22. No construction of the mall addition above ground, or filling of earth within 25 feet of the existing channel of Tenney Brook, except for a single road crossing, shall occur until an engineer has certified in writing to the District Commission that the new stream channel is properly constructed and flowing in a stable manner consistent with the approved plans. No such
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certification shall be issued until the applicant has a registered engineer familiar with stream hydraulics certify in writing that the new stream channel can withstand a storm of one year frequency.

23. To protect fisheries habitat, stream flow in Tenney Brook shall be transferred from the existing channel to the new channel only during the month of September.
 24. The bed of the new stream channel shall be constructed with a minimum depth of 12 inches of native gravel. The diameter of the gravel shall range from one-quarter inch to two inches.
 25. No filter fabric shall be placed under the new stream bed.
 26. The District Commission reserves the right, for the duration of the permit, to impose additional conditions regarding the maintenance of the new channel of Tenney Brook to ensure that adequate aquatic habitat is maintained, and that the new stream channel is not unreasonably scoured or damaged. The District Commission may require the placement of additional gravel, relocation or addition of rocks and boulders to create riffles and pools, and the addition of vegetation along the stream channel or other conditions.
 27. The Permittee shall follow the erosion control procedures submitted with the application, and shall take other necessary actions to ensure that eroded sediment from the construction site will not enter Tenney Brook or its tributaries, including, but not limited to, the following actions:
 - a. Stabilize the initial road crossing over Tenney Brook with mulch within 24 hours of placement of the culvert and fill and immediately propagate and maintain a cover of rye grass over the fill materials within 25 feet of the stream.
 - b. Maintain a 25 foot undisturbed isolation zone on each side of Tenney Brook, except at a single road crossing, until the stream flow is permanently diverted into its new channel. This zone should be lined with a hay bale dike.
 - c. Maintain a hay bale dike along the edge of the wetland area which is not to be filled until such time as the sediment ponds along the wetland's edge are operational and stable.
 - d. Minimize the duration of any construction activity in or adjacent to the stream channel.
 - e. Perform all excavation work in the wetland area during the winter months when the ground is frozen.
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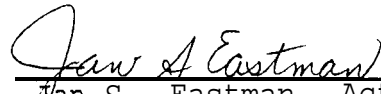
- f. Place hay bale dikes around all catch basins, existing or new, which receive drainage water from exposed soils.
 - g. Construct the final grade of the borrow area to the west of the mall building to a maximum of 1 on 2 or 50 percent.
 - h. Refrain from commencing any site work until after a pre-construction conference has been held on site with representatives for the Permittee, the contractor, the District Commission, and the Agency of Natural Resources. The purpose of the conference will be to examine the erosion control procedures to be followed by the contractor. Additional site conferences may be scheduled at the discretion of the District Commission to review work as it progresses.
28. The District Commission reserves the right to impose additional conditions to ensure that undue soil erosion does not result from this project.
29. The Permittee shall not commence construction of the mall building above ground, nor finish the internal roadway and parking areas, until an alternate site plan has been approved by the District Commission which incorporates a second emergency access, a new internal circulation pattern and other necessary improvements to avoid potential conflicts.
30. The Permittee shall provide, prior to occupancy of the expansion, a crosswalk over Route 4 at the mall entrance, an extension of the sidewalk along the north side of Route 4 to connect the city sidewalk network with the mall entrance, an internal sidewalk to connect the walks listed above to the mall building, and a system that will permit pedestrians to interrupt the flow of traffic on Route 4. The design and location walkways must be approved by the District Commission prior to construction.
31. No additional signs shall be placed on the wall or roof of the mall addition without the approval of the District Commission.
32. Any existing signs on the existing mall building shall not be replaced without the approval of the District Commission.
33. The new project sign shall not exceed 150 square feet on each side and shall not exceed 8 feet in width or 25 feet in height. The sign shall not be internally illuminated.
34. A grove of pine trees adjacent to the Martin's Food Store shall not be disturbed and shall be roped off during construction activities for identification by the contractor.
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35. The Permittee shall employ a full-time maintenance staff at the project site. One of the duties of the maintenance staff shall be to police the project site on a daily basis and collect litter and debris in the parking lot and adjacent areas.
 36. The District Commission reserves the right to impose additional conditions as necessary to ensure that litter is not allowed to blow onto neighboring properties.
 37. The Permittee shall provide the Division of Historic Preservation notice of its intent to commence construction and shall provide the Division reasonable opportunity to survey the construction site for archeological relics. In the event the Division finds such relics, the Permittee shall provide the Division reasonable opportunity to catalog such finds prior to construction. The District Commission retains jurisdiction over this matter to ensure that the Division of Historic Preservation can adequately monitor the site.
 38. The Permittee shall install, and shall require that tenants install, 'watt-mizer" or energy conserving light fixtures in the interior of the building.
 39. The Permittee shall require tenants who will use more than 10 gallons of hot water per day to install only a gas-fired hot water heater.
 40. The Permittee shall require that all tenants, other than a restaurant, shall not allow their domestic hot water to be heated over 120 degrees Fahrenheit.
 41. The Permittee shall require any restaurant tenant to install kitchen utilities with gas-fired heating elements, including any hot water heaters, dishwasher booster heaters, ovens, and grills.
 42. The Permittee shall require that all tenants install set back thermostats for both heating and cooling to reduce energy loads during non-business hours.
 43. The Permittee shall install insulation in the roof of the mall addition with an R-value of at least 18.
 44. The Permittee shall retrofit the existing mall with air lock entries at the exterior public entrances to any common areas.
 45. The Permittee shall turn off all exterior lights during non-business hours which are not necessary for security or on-going maintenance operations such as snow plowing.
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46. All construction and site work associated with this project shall be completed in accordance with the approved plans by October 15, 1991, unless an extension of this date is approved in writing by the District Commission. Such approval may be granted without notice to parties.
47. This permit shall expire on January 1, 2019, unless extended by the District Commission.

Dated at Montpelier, Vermont this 19th day of December, 1988.

ENVIRONMENTAL BOARD



Jan S. Eastman, Acting Chair
Ferdinand Bongartz
Elizabeth Courtney
Samuel Lloyd
Arthur Gibb

LUP 1R0048-8-EB (18)